

**Title 35-A: PUBLIC UTILITIES**  
**Chapter 7: REGULATION AND CONTROL OF PUBLIC UTILITIES**

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**Maine Revised Statutes**  
**Title 35-A: PUBLIC UTILITIES**  
**Chapter 7: REGULATION AND CONTROL OF PUBLIC UTILITIES**

**§701. SPECIAL PRIVILEGES FORBIDDEN**

**1. Person furnishing facilities incident to service.** No public utility may demand, charge, collect or receive from any person less compensation for any service rendered or to be rendered by the public utility in consideration of the person furnishing a part of the facilities incident to the service.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Renting facilities.** This section does not prohibit a public utility from renting any facilities incident to the production, transmission, delivery or furnishing of transmission and distribution service, gas, heat or water or the conveyance of telephone messages and paying a reasonable rental for the facilities.

[ 1999, c. 398, Pt. A, §16 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

**3. Furnishing appliances.** Nothing in this section requires a public utility to furnish any part of the appliances which are situated in or upon the premises of any customer or user, except a telephone interface upon the subscribers' premises, and unless otherwise ordered by the commission, meters and appliances for the measurement of any product or service.

[ 1987, c. 490, Pt. C, §3 (AMD) .]

**4. Classifications of telephone service.** Nothing in this section affects scheduled classifications of telephone service in which separate charges are made for facilities and for service or scheduled classifications of rural telephone service in which a portion of the facilities are regularly furnished by the user of the service.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**SECTION HISTORY**

1987, c. 141, §A6 (NEW). 1987, c. 490, §C3 (AMD). 1995, c. 225, §5 (AMD). 1999, c. 398, §A16 (AMD). 1999, c. 398, §§A104,105 (AFF).

**§702. UNJUST DISCRIMINATION**

**1. Unjust discrimination.** It is unlawful for a public utility to give any undue or unreasonable preference, advantage, prejudice or disadvantage to a particular person.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Solar energy.** No public utility providing electric or gas service may consider the use of solar energy by a customer as a basis for establishing higher rates or charges for energy or service sold to the customer.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Service and facilities.** Every public utility providing transmission and distribution or gas service, upon reasonable notice, shall furnish to all persons who may apply for facilities and service, suitable facilities and service consistent with policies approved or established by the commission, without undue delay and without unreasonable discrimination.

[ 1999, c. 398, Pt. A, §17 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1999, c. 398, §A17 (AMD). 1999, c. 398, §§A104,105 (AFF).

## §703. REBATES; DISCOUNTS AND DISCRIMINATION

**1. Free or special rates prohibited.** No person may knowingly solicit, accept or receive any rebate, discount or discrimination in respect to any service rendered, or to be rendered by a public utility, or for any related service where the service is rendered free or at a rate less than named in the schedules in force, or where a service or advantage is received other than is specified.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Free and special rates allowed under certain circumstances.** This Title does not prohibit:

A. A public utility from granting service at free or reduced rates for charitable or benevolent purposes or for national or civilian defense purposes; [1987, c. 141, Pt. A, §6 (NEW) .]

B. A public utility from supplying water and service free or at reduced or special rates to any person, firm or corporation for fire protection purposes through or by means of any apparatus or appliances furnished, installed or maintained by the person, firm or corporation, provided it is approved by the commission; or [1987, c. 141, Pt. A, §6 (NEW) .]

C. A public utility from making special rates for its employees or in case of emergency service. [1987, c. 141, Pt. A, §6 (NEW) .]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Existing contracts.** The furnishing by a public utility of a product or service at the rates and upon terms and conditions provided for in a contract in existence January 1, 1913, may not be construed as constituting a discrimination or undue or unreasonable preference or advantage within the meaning specified. When any such contract or contracts are or become terminable by notice of a utility, the commission may order that the contract or contracts be terminated by the utility as and when directed by the order.

[ 1995, c. 254, §2 (AMD) .]

**3-A. Special contracts.** A public utility, subject to the commission's approval, may make a contract for a definite term for its product or service, but the published rates for the product or service may not be changed during the term of the contract without the commission's consent.

[ 2011, c. 623, Pt. C, §3 (AMD) .]

**4. Forfeiture.**

[ 2003, c. 505, §14 (RP) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 490, §A2 (AMD). 1995, c. 254, §§2,3 (AMD). 2003, c. 505, §14 (AMD). 2009, c. 66, §1 (AMD). 2011, c. 623, Pt. C, §3 (AMD).

## §704. TERMINATION OF UTILITY SERVICES

The following provisions apply to termination of a customer's utility service. [1987, c. 141, Pt. A, §6 (NEW).]

**1. Residential customers.** The commission shall adopt and promulgate reasonable rules after a hearing concerning the termination or disconnection of any residential customer's service by a transmission and distribution, gas, water or telephone utility of the State. These rules apply generally to all such utilities within the commission's jurisdiction and must provide for adequate written notice by that utility to the residential customer that the customer's utility bill has not been paid, and a notice of the prospective termination or disconnection and the right, prior to disconnection, to enter into reasonable installment payment arrangements with that utility; to settle any dispute concerning the proposed disconnection at an informal hearing with that utility and to appeal the results of that utility's decision to the commission. The rules must also provide that there may be no termination or disconnection during a limited medical emergency and for a just and reasonable procedure regarding reconnections of utility service and deposit requirements.

[ 1999, c. 398, Pt. A, §18 (AMD); 1999, c. 398, Pt. A, §§104, 105 (AFF) .]

**1-A. Agreements with landlords.** A transmission and distribution utility shall, upon request of a landlord, enter into an agreement with that landlord with respect to a residential rental property receiving transmission and distribution service in the name of that landlord's tenant to automatically transfer the service to the name of the landlord if the service would otherwise be disconnected. The transmission and distribution utility must notify the landlord within 72 hours of the transfer of the service to the landlord's name. Except upon the consent of the tenant, the transmission and distribution utility may not disclose to the landlord any personal or confidential information regarding the tenant or the tenant's account, except that a utility may disclose to the landlord that the service has been transferred to the landlord's name and any other information necessary to enable the utility to continue service to the premises.

The transmission and distribution utility may charge a reasonable fee for the costs associated with the transfer of the service to the landlord's name.

[ 2013, c. 250, §1 (NEW) .]

**2. Nonresidential customers.** Each public utility shall file with the commission schedules containing its terms and conditions applicable to termination of utility services to any nonresidential customer, which terms and conditions shall be subject to the commission's power under this Title. Every public utility shall comply with its terms and conditions. The commission shall adopt rules which provide a procedure for resolution by the commission or its delegate of disputes as to whether a proposed termination by a public utility is in compliance with its terms and conditions. A public utility may not terminate service to a nonresidential customer if the commission or its delegate rules within 7 days of receipt of the request for ruling that the proposed termination is not in compliance with the utility's terms and conditions. If the rules authorize a delegate to resolve disputes, the rule shall include a procedure for appeal of the decision to the commission.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

### 3. Violation of rules.

[ 2003, c. 505, §15 (RP) .]

**4. Property loss suffered by a customer.** Upon a finding by the District Court of a property loss suffered by a customer causally related to a willful or reckless violation by a public utility of any substantive rule adopted by the commission pursuant to the authority granted in this section, the court may order the public utility to compensate the customer for the actual loss, less any setoff for a balance found to be due the utility by the customer for unpaid utility service. That loss may not include consequential damages. No action for damages resulting from a termination that was in willful or reckless violation of the commission's rules may be commenced until at least 60 days after notice of a claim setting forth the nature of the termination and the damages suffered has been provided to the utility. That notice must be provided to the utility in writing within 30 days of the termination.

[ 2003, c. 505, §16 (AMD) .]

**5. Confidentiality of customer information.** The following provisions apply to the confidentiality of customer information.

A. Records containing the following information are confidential and are not public records for the purpose of Title 1, section 402, subsection 3:

(1) Information acquired by the consumer assistance and safety division regarding the payment and credit history and financial condition of a customer who has requested the assistance of the division; and

(2) Information acquired by the consumer assistance and safety division regarding the medical condition of a customer or member of a customer's family. [2015, c. 8, §6 (AMD) .]

B. Notwithstanding paragraph A, any person, agency or public utility directly involved in the investigation of an individual customer matter shall be given access to the information which is pertinent to the complaint. [1987, c. 614, §2 (NEW) .]

C. Compilations of information in which the customer's identity is not disclosed are not confidential. [1987, c. 614, §2 (NEW) .]

D. The consumer assistance and safety division shall prepare its decisions or abstracts of decisions in a manner that protects the confidentiality of customer information as provided by this subsection. Those decisions or abstracts of decisions must be available for public access. [2015, c. 8, §6 (AMD) .]

[ 2015, c. 8, §6 (AMD) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1987, c. 614, §2 (AMD). 1999, c. 398, §A18 (AMD). 1999, c. 398, §§A104,105 (AFF). 1999, c. 547, §§B76,78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 505, §§15,16 (AMD). 2013, c. 250, §1 (AMD). 2015, c. 8, §6 (AMD).

## §705. UTILITY DEPOSITS

The following provisions apply to deposits of utility customers: [1987, c. 141, Pt. A, §6 (NEW) .]

**1. Residential customers.** No public utility may require any deposit of any residential customer without proof that the customer is likely to be a credit risk or to damage the property of the utility. That proof shall be furnished to the customer upon request. Absence of previous experience with the utility shall not be proof that the customer is a credit risk or threatens to damage utility property.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Nonresidential customers.** Every public utility shall file with the commission schedules containing its terms and conditions for requiring a deposit from nonresidential customers, which terms and conditions shall be subject to the commission's power under this Title. Every public utility shall comply with its terms and conditions. The commission shall adopt rules which provide a procedure for resolution by the commission or its delegate of disputes as to whether a deposit being required by a public utility is in compliance with its terms and conditions. If the rules authorize a delegate to resolve disputes, the rules shall include a procedure for appeal of the decision to the commission.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Interest rate on deposits.** The commission shall adopt reasonable rules, after hearing, to provide for a just and reasonable interest rate to be paid by the utility on any deposit of any customer.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW).

## §706. TENANTS NOT LIABLE FOR A LANDLORD'S UTILITY BILLS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Landlord" means any person who rents or leases land or structures to others for compensation or any person who manages or controls the property on behalf of another. [1987, c. 141, Pt. A, §6 (NEW) .]

B. "Rental property" means property used or occupied by any tenant for which rent is paid to a landlord. [1987, c. 141, Pt. A, §6 (NEW) .]

C. "Tenant" means any person who pays rent to any landlord for the use or occupation of any land or structure owned by another or who occupies or uses the property, regardless of whether the tenancy is subject to a written lease. [1987, c. 141, Pt. A, §6 (NEW) .]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Disconnection of tenant.** In every instance where the landlord has applied for and is granted utility service, the landlord is responsible for payment for that service with respect to any rental property. The utility may not demand payment from the tenant for utility service to the tenant because of the landlord's failure to pay for utility service rendered at the rental property. The utility may disconnect the tenant only after affording the tenant notice and opportunity to assume responsibility for future service in accordance with the rules of the commission. Any tenant who has assumed responsibility for future service under this section and paid all or any portion of the utility service for the rental property to a utility may deduct the amount paid from any rent due to the landlord.

[ 1989, c. 87, §2 (AMD) .]

**3. Lien against the rental property.** In addition to whatever other legal remedies the utility may have against the landlord who does not pay for utility service provided to rental property, the utility shall have a lien upon the rental property and on any interest the landlord has in the same, to secure payment for utility services to that property with costs.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Dissolution of the lien, lien certificate.** This lien shall be dissolved unless within 90 days after the date on which the unpaid bill was served, the utility files in the registry of deeds for the county in which the property is located a lien certificate, setting forth the amount of the lien, the name of the landlord, a statement that a lien is claimed on the rental property to secure the payment of utility services, that a demand has been made for that payment and that payment has not been made. At the time of the recording of the lien certificate in the registry of deeds, the utility shall send a copy of the certificate to the landlord by certified mail, return receipt requested. This lien shall be dissolved unless, within 120 days after the unpaid bill was served, civil action to enforce the lien is brought in the District Court for the division where the rental property is located.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**5. Enforcement of the lien.** The proceedings in the District Court for enforcement of this lien shall be governed by Title 10, sections 3256 to 3260, and 3263 and 3264.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**6. Subsequent purchaser takes title free of lien.** Any person who is a bona fide purchaser for value of rental property takes title to that property free of the lien established under subsection 3 unless, before the purchaser's deed is recorded, the utility has filed the certificate set out in subsection 4. The interest of any mortgagee of rental property is not affected by the lien established unless, before the mortgage is recorded, the utility has filed the certificate set out in subsection 4.

[ 1993, c. 110, §1 (AMD) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1989, c. 87, §2 (AMD). 1993, c. 110, §1 (AMD).

## §707. AFFILIATED INTERESTS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affiliated interest" means:

(1) With respect to a public utility other than a provider of provider of last resort service:

- (a) Any person who owns directly, indirectly or through a chain of successive ownership 10% or more of the voting securities of a public utility;
- (b) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by an affiliated interest as defined in division (a);
- (c) Any person, 10% or more of whose voting securities are owned, directly or indirectly, by a public utility;
- (d) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a public utility, if the person or group of persons beneficially owns more than 3% of the public utility's voting securities; or
- (e) Any public utility of which any person defined in divisions (a) to (d) is an affiliated interest; or

(2) With respect to a provider of provider of last resort service:

- (a) Any person who owns directly, indirectly or through a chain of successive ownership 25% or more of the voting securities of a provider of provider of last resort service;
- (b) Any person, 25% or more of whose voting securities are owned, directly or indirectly, by a provider of provider of last resort service;



(c) Any person, or group of persons acting in concert, that the commission may determine, after investigation and hearing, exercises substantial influence over the policies and actions of a provider of provider of last resort service, if the person or group of persons beneficially owns more than 3% of the provider's voting securities; or

(d) Any provider of provider of last resort service of which any person defined in divisions (a) to (c) is an affiliated interest.

[ 2011, c. 623, Pt. A, §11 (AMD). ]

B. "Transaction" means any dealings between a public utility and its affiliated interests that affect, directly or indirectly, any accounting entry of the public utility, as prescribed pursuant to section 501.

[ 2011, c. 623, Pt. A, §11 (AMD). ]

C. "Voting security" means any security or any proprietary or other interest presently entitling the owner or holder of the security to vote in the direction or management of the affairs of a company. [ 1987, c. 141, Pt. A, §6 (NEW). ]

[ 2011, c. 623, Pt. A, §11 (AMD) . ]

**2. Access to accounts and records.** The commission may require the production of books, accounts, records, papers and memoranda of any affiliated interest which relates, directly or indirectly, to its transactions with a public utility. The commission may, in determining the reasonableness of utility rates, disallow all or a portion of the payments under any transaction, the account or record of which is not made available to the commission.

[ 1987, c. 141, Pt. A, §6 (NEW) . ]

**3. Consent by commission.** No public utility may extend or receive credit, including the guarantee of debt, or make or receive a loan to or from an affiliated interest or make any contract or arrangement for the furnishing of management, supervision of construction, engineering, accounting, legal, financial or similar services, or for the furnishing of any service or real or personal property other than those enumerated with any affiliated interest until the commission finds that the contract or arrangement is not adverse to the public interest and gives the contract or arrangement its written approval.

A. Unless the commission disapproves it within 60 days of filing, a contract or arrangement filed with the commission under this section is deemed approved. The commission may, however, suspend the effective date of the contract or arrangement for an additional 60 days if necessary to enable the commission to complete its review of the contract or arrangement. [ 1987, c. 141, Pt. A, §6 (NEW) . ]

B. The commission may approve a contract or arrangement with an affiliated interest undertaken after October 24, 1977, subject to such terms, conditions and requirements as it determines necessary to safeguard the public interest. If the contract or arrangement is not consented to or approved by the commission as provided in this section, the commission may disallow, for rate-making purposes, payments or part of any such payments as the commission finds not to be in the public interest, and the commission may, after notice to the affected parties and opportunity for hearing, declare that contract or arrangement prospectively void as it applies to utility operations within the State. Unless otherwise invalid, that contract or arrangement shall remain in effect until declared prospectively void as it applies to utility operations within the State by an effective final order of the commission issued under this section no later than 90 days from the date of service of the notice. [ 1989, c. 159, §2 (AMD) . ]

C. The commission may, in the case of a utility or group of utilities, exempt from this section from time to time classes of transactions as it may specify by rule or order in advance and which in its judgment will not be adverse to the public interest. [ 1987, c. 141, Pt. A, §6 (NEW). ]

D. Commission approval of a contract or arrangement under this section may not limit or restrict the powers of the commission in determining and fixing any rate, fare, toll, charge, classification, schedule or joint rate as provided in this Title. [1987, c. 141, Pt. A, §6 (NEW).]

E. By rule or by order, after notice and hearing, the commission may make this section applicable to contracts or arrangements between affiliated interests of a public utility, even though the public utility is not a party to the contracts or arrangements, in cases where the purpose of the contracts or arrangements is to furnish the services or goods to be used by the public utility in the course of its operations in the State, as described in this subsection. [1989, c. 159, §2 (NEW).]

F. In addition to the exemptions permitted by paragraph C and subsection 4, the commission for good cause may, by rule or by order, exempt classes of contracts or arrangements or a utility or group of utilities from filing or obtaining commission approval of a contract or arrangement with an affiliated interest or between affiliated interests prior to the entry into the contract or arrangement by the utility, provided that no such exemption may exceed 60 days and that the commission shall thereafter approve or disapprove the contract pursuant to this subsection. [1989, c. 159, §2 (NEW).]

G. For any contract or arrangement expected to involve the use by an affiliated interest of utility facilities, services or intangibles, including good will or use of a brand name, the commission shall determine the value of those facilities, services or intangibles. When its facilities, services or intangibles are used by the affiliated interest, the utility's costs must be charged to and received from the affiliated interest based upon this value. The commission shall also determine the proper allocation of costs for shared facilities, services or intangibles. If the commission is unable to make the value determinations required by this paragraph within the time limits imposed by paragraph A, the commission may approve the contract or arrangement without making the determinations, except that the commission shall make the determinations within 60 days of approving the contract or arrangement. [1997, c. 237, §1 (NEW).]

[ 1997, c. 237, §1 (AMD) .]

**4. Waiver.** The commission may, by general rules, waive the requirements for filing and for approval of contracts and arrangements described in subsection 3 in cases of:

A. Contracts or arrangements made in the ordinary course of business for the employment of officers or employees; [1987, c. 141, Pt. A, §6 (NEW).]

B. Contracts or arrangements made in the ordinary course of business for the purchase of services, supplies or other personal property; [1987, c. 141, Pt. A, §6 (NEW).]

C. Contracts or arrangements where the total obligation to be incurred does not exceed \$500; [1987, c. 141, Pt. A, §6 (NEW).]

D. The temporary leasing, lending or interchanging of equipment in the ordinary course of business in case of an emergency; and [1987, c. 141, Pt. A, §6 (NEW).]

E. Contracts made by a public utility with any person whose bid is the most favorable to the public utility. [1987, c. 141, §6 (NEW).]

However, if the commission finds that any public utility is abusing or has abused the waiver granted in this section in order to evade compliance with this section, the commission may require that public utility to file and receive the commission's approval of all such contracts as provided for in this section, but the general waiver shall remain in effect as to all other public utilities.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

## **5. Violations.**

[ 2003, c. 505, §17 (RP) .]

**6. Application.** This section does not apply to any telephone utility other than a provider of provider of last resort service with respect to affiliated interests that are directly related to or that may directly affect provider of last resort service in this State, as determined by the commission by rule or order. Rules adopted under this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 623, Pt. A, §12 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1989, c. 159, §2 (AMD). 1997, c. 237, §1 (AMD). 2003, c. 505, §17 (AMD). 2011, c. 623, Pt. A, §§11, 12 (AMD).

## §708. REORGANIZATIONS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Reorganization" means any creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest as defined in section 707 accomplished by the issue, sale, acquisition, lease, exchange, distribution or transfer of voting securities or property. The commission may decide what other public utility actions constitute a reorganization to which the provisions of this section apply. Reorganizations include any reorganization for which a proceeding for approval is pending before any state or federal agency or court on or after July 13, 1982. For purposes of this subsection, a reorganization does not include any proceeding under the federal antitrust laws or the transfer of voting securities by gift, device or inheritance. [1987, c. 141, Pt. A, §6 (NEW).]

B. "Voting security" means any security presently entitling the owner or holder of any security to vote in the direction or management of the affairs of a company or any proprietary or other interest serving the same purposes. [1987, c. 141, Pt. A, §6 (NEW).]

C. "Controlling interest" means:

- (1) Voting power over voting shares of a corporation or entity that entitle the holders of those shares to cast at least 25% of the votes that all shareholders are entitled to cast in an election of the directors of the corporation or entity; or
- (2) Voting power over at least 25% of the shares in any class of shares entitled to elect all the directors or any specified number of the directors.

For the purposes of this section, a person does not have a controlling interest if that person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified under this paragraph or who are not considered to have a controlling interest under this paragraph.

A person has voting power over a voting share if that person has shares, directly or indirectly, through any option, contract, arrangement, understanding, voting trust or conversion right or, by acting jointly or in concert or otherwise, has the power to vote, or to direct the voting of, that voting share. [2011, c. 623, Pt. A, §13 (NEW).]

[ 2011, c. 623, Pt. A, §13 (AMD) .]

**2. Reorganization subject to commission approval.** Reorganization shall be subject to commission approval as follows.

A. Unless exempted by rule or order of the commission, no reorganization may take place without the approval of the commission. No reorganization may be approved by the commission unless it is established by the applicant for approval that the reorganization is consistent with the interests of

the utility's ratepayers and investors. The commission shall rule upon all requests for approval of a reorganization within 60 days of the filing of the request for approval. If it determines that the necessary investigation cannot be concluded within 60 days, the commission may extend the period for a further period of no more than 120 days. In granting its approval, the commission shall impose such terms, conditions or requirements as, in its judgment, are necessary to protect the interests of ratepayers. These conditions shall include provisions which assure the following:

- (1) That the commission has reasonable access to books, records, documents and other information relating to the utility or any of its affiliates, except that the Public Utilities Commission may not have access to trade secrets unless it is essential to the protection of the interests of ratepayers or investors. The commission shall afford trade secrets and other information such protection from public disclosure as is provided in the Maine Rules of Civil Procedure;
- (2) That the commission has all reasonable powers to detect, identify, review and approve or disapprove all transactions between affiliated interests;
- (3) That the utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is not impaired;
- (4) That the ability of the utility to provide safe, reasonable and adequate service is not impaired;
- (5) That the utility continues to be subject to applicable laws, principles and rules governing the regulation of public utilities;
- (6) That the utility's credit is not impaired or adversely affected;
- (7) That reasonable limitations be imposed upon the total level of investment in nonutility business, except that the commission may not approve or disapprove of the nature of the nonutility business;
- (8) That the commission has reasonable remedial power including, but not limited to, the power, after notice to the utility and all affiliated entities of the issues to be determined and the opportunity for an adjudicatory proceeding, to order divestiture of or by the utility in the event that divestiture is necessary to protect the interest of the utility, ratepayers or investors. A divestiture order shall provide a reasonable period within which the divestiture shall be completed; and
- (9) That neither ratepayers nor investors are adversely affected by the reorganization. [1987, c. 141, Pt. A, §6 (NEW).]

B. The commission may intervene on behalf of the State in any proceeding before any state or federal agency or court before which an application for approval of reorganization is pending. The commission may enter into any binding settlement related to any proceeding in which the commission has intervened and may exercise any powers or rights provided by that settlement and may enforce these powers or rights. [1987, c. 141, Pt. A, §6 (NEW).]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2-A. Approval does not affect rate-making powers.** Commission approval of a reorganization under this section may not limit or restrict the powers of the commission in determining and fixing any rate, fare, tolls, charge, classification, schedule or joint rate as provided in this Title.

[ 1989, c. 159, §3 (NEW) .]

**3. Waiver.** The commission may, by general rule, exempt classes of reorganizations from the requirements of subsection 2.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Filing fee.** Within 30 days after the application for approval of a reorganization is filed pursuant to subsection 2, the commission may order the applicant to pay a filing fee not to exceed \$50,000, if the commission determines that the application may involve issues which will necessitate significant additional

costs to the commission. The applicant may request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days. Notwithstanding any other provision of law, filing fees paid as required in this subsection shall be segregated, apportioned and expended by the commission for the purposes of processing the application. Any portion of the filing fee that is received from an applicant and is not expended by the commission to process the application shall be returned to the applicant.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**5. Limitation.** The provisions of this section do not apply to any telephone utility other than a provider of provider of last resort service and apply to a provider of provider of last resort service only if the reorganization results in a merger, sale or transfer of a controlling interest of the provider of provider of last resort service.

[ 2011, c. 623, Pt. A, §14 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1989, c. 159, §3 (AMD). 2011, c. 623, Pt. A, §§13, 14 (AMD).

## §709. INSIDER TRANSACTIONS

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Insider" means any officer or employee who participates or has authority to participate in major policy-making functions of a public utility or of an affiliated interest, as defined in section 707, or any director or trustee of a public utility or of an affiliated interest. [1987, c. 141, Pt. A, §6 (NEW) .]

B. "Insider transaction" means any dealings which affect, directly or indirectly, any accounting entry as prescribed pursuant to section 501 between a public utility and:

- (1) An insider of the public utility;
- (2) A person related to an insider of the public utility;
- (3) Any other person where the transaction is made in contemplation of the person becoming an insider of the public utility; or
- (4) Any other person where the transaction inures to the tangible economic benefit of an insider or a person related to an insider. [1987, c. 141, Pt. A, §6 (NEW) .]

C. "Person" means a corporation, partnership, limited partnership, business association, trust, estate or natural person. [1987, c. 141, Pt. A, §6 (NEW) .]

D. "Person related to an insider" means:

- (1) An insider's spouse;
- (2) An insider's parent or stepparent, or child or stepchild; or
- (3) Any other relative who lives in an insider's home. [1987, c. 141, Pt. A, §6 (NEW) .]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Approval and disclosure of insider transactions.** An insider transaction shall be specifically reviewed and approved by the public utility's board of directors or trustees, provided that when an insider transaction is part of a series of related transactions involving the same insider, approval of each separate

transaction is not required so long as the public utility's board of directors or trustees has reviewed and approved each series of related transactions and the terms and conditions under which the transactions may take place. The minutes of the meeting at which approval is given shall indicate the nature of the transaction or transactions, that the review was undertaken and approval given and the names of individual directors or trustees who voted to approve or disapprove the transaction or transactions. In the case of negative votes, a brief statement of each dissenting director's or trustee's reason for voting to disapprove the proposed insider transaction or transactions shall be included in the minutes if its inclusion is requested by the dissenting director or trustee.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Information pertaining to insider transactions.** Each public utility shall submit to the commission with its annual report a record of insider transactions requiring review and approval under subsection 2. Each public utility shall make readily available to the commission, upon request, all documents and other materials relied upon by the board in approving each insider transaction, including the name of the insider, the insider's positions or relationship that causes the person to be considered an insider, the date on which the transaction was approved by the board, the type of insider transaction and the relevant terms of the transaction, any other pertinent facts which serve to explain or support the basis for the board's decision and any statements submitted for the minutes or the file by directors or trustees who voted not to approve the transaction setting forth their reasons for the vote.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Discovery of insider relationship.** When a public utility becomes aware of the existence of an insider relationship after entering into a transaction for which approval would have been required under subsection 2, the public utility shall promptly report that transaction in writing to the commission.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**5. Knowledge of proposed insider transaction.** Any insider, having knowledge of an insider transaction between the public utility and that insider, a person related to that insider or any other person where the transaction inures to the tangible economic benefit of that insider or person related to that insider, shall give timely notice of the transaction to the public utility's board of directors or trustees.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

#### **6. Civil violation; forfeiture.**

[ 2003, c. 505, §18 (RP) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 2003, c. 505, §18 (AMD).

## **§710. ACCIDENTS INVESTIGATED; REPORTS**

If an accident occurs upon the premises of a public utility or directly or indirectly arises from or is connected with its maintenance or operation, the following provisions apply. [1987, c. 141, Pt. A, §6 (NEW) .]

**1. Accidents resulting in loss of life.** If the accident results in the loss of human life, the public utility shall file a report of the accident in accordance with subsection 4 and the commission shall cause an investigation of the accident to be made immediately.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**2. Accidents resulting in personal injury or property damage.** If the accident results in personal injury or damage to property, the public utility shall file a report of the accident in accordance with subsection 4 and the commission may investigate if in its judgment the public interest requires it.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**3. Investigations.** Investigations shall be made in compliance with the following provisions:

A. An investigation shall be held in the locality of the accident unless, for the greater convenience of those concerned, the commission orders it to be held at some other place. An investigation may adjourn from place to place as may be necessary and convenient. [1987, c. 141, Pt. A, §6 (NEW) .]

B. The commission shall seasonably notify the public utility of the time and place of investigations. [1987, c. 141, Pt. A, §6 (NEW) .]

C. The public utility shall have an opportunity to be heard during the investigation. [1987, c. 141, Pt. A, §6 (NEW) .]

D. The commission may make such order or recommendation based on its investigation as in its judgment seems just and reasonable. [1987, c. 141, Pt. A, §6 (NEW) .]

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Filing accident reports.** Every public utility shall file reports of accidents described in subsections 1 and 2 with the commission. Accident reports must be filed in compliance with the commission's rules and in the manner and form designated by the commission. Accidents resulting in loss of human life must be reported immediately by telephone, facsimile machine or electronic media in a manner designated by the commission followed by a detailed written report.

[ 1995, c. 225, §6 (AMD) .]

**5. Reports not admitted as evidence in an action.** No order or recommendation of the commission or accident report filed with the commission may be admitted as evidence in any action for damages based on or arising out of the loss of life or injury to person or property referred to in this section.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1995, c. 225, §6 (AMD).

## §711. JOINT USE OF EQUIPMENT

**1. Joint use permitted.** The commission may order that joint use be permitted and prescribe reasonable compensation and reasonable terms and conditions for the joint use when, after a hearing had upon its own motion or upon complaint of a public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system affected, it finds the following:

A. That public convenience and necessity require the use by one public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system of the conduits, subways, wires, poles, pipes or other equipment, or any part of them, on, over or under any street or highway and belonging to another public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system; [2011, c. 623, Pt. B, §4 (AMD) .]

B. That joint use will not result in irreparable injury to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment or in any substantial detriment to the service; and [1987, c. 141, Pt. A, §6 (NEW) .]

C. That the public utilities, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system have failed to agree upon the use or the terms and conditions or compensation for the use. [2011, c. 623, Pt. B, §4 (AMD).]

[ 2011, c. 623, Pt. B, §4 (AMD) .]

**2. Liability of user.** If joint use is ordered, the public utility, voice service provider, dark fiber provider, wholesale competitive local exchange carrier or cable television system to whom the use is permitted is liable to the owner or other users of the conduits, subways, wires, poles, pipes or other equipment for damage that may result from its use to the property of the owner or other users.

[ 2011, c. 623, Pt. B, §4 (AMD) .]

**3. Interests of cable television subscribers.** Any actions taken or orders issued by the commission under this section shall take into account the interests of the subscribers of the affected cable television system, as well as the customers of the affected public utilities.

[ 1987, c. 141, Pt. A, §6 (NEW) .]

**4. Rules.** The commission shall adopt a rule governing the resolution of pole attachment rate disputes. The commission shall consider various formulas, including, but not limited to, the formula adopted by the Federal Communications Commission as codified in 47 Code of Federal Regulations, Part 1, Subpart J, as amended.

[ 1991, c. 708, §1 (NEW) .]

**5. Dark fiber provider.** This section applies to a dark fiber provider only with respect to the construction and maintenance of federally supported dark fiber.

[ 2009, c. 612, §4 (NEW) .]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW). 1991, c. 708, §1 (AMD). 2009, c. 612, §4 (AMD). 2011, c. 623, Pt. B, §4 (AMD).

## §712. COMPETITIVE BIDS

Any contract in excess of \$2,000 between a public utility and a contractor for the construction of facilities located on private property for the exclusive use of a private individual and for which the private individual is required to pay the total cost directly to the utility, shall be awarded by a system of competitive bidding. Unless there are valid reasons to the contrary, contracts shall be awarded to the lowest responsible bidder. [1987, c. 141, Pt. A, §6 (NEW).]

#### SECTION HISTORY

1987, c. 141, §A6 (NEW).

## §713. UNREGULATED BUSINESS VENTURES OF UTILITIES

A utility may not charge its ratepayers for costs attributable to unregulated business ventures undertaken by the utility or an affiliated interest. The commission shall allocate, between a utility's shareholders and ratepayers, costs for facilities, services or intangibles, including good will or use of a brand name, that are shared between regulated and unregulated business activities. The commission shall also attempt to ensure that the utility or the affiliated interest does not have an unfair advantage in any competitive market as a result of its regulated status or its affiliation with a regulated utility. [1999, c. 158, §1 (AMD).]



Complaints by entities competing with a utility or an affiliated interest in an unregulated market, alleging that the utility or affiliated interest has an undue competitive advantage must be adjudicated by the commission. The commission shall render a decision on any complaint filed under this section within 9 months of the date of the filing. The commission may dismiss without hearing any complaint that it concludes is clearly intended to harass or delay, is frivolous or is clearly without merit. [1999, c. 158, §1 (AMD).]

A complaint filed under this section must specify, to the extent possible, the nature and extent of the alleged undue competitive advantage and the basis for the belief that an undue competitive advantage exists. The utility shall respond to the complaint within 10 days of receiving notice from the commission of the complaint. Within 10 days of receiving the utility's response, the commission shall determine whether the complaint is clearly intended to harass or delay, is frivolous or is clearly without merit. [1999, c. 158, §1 (AMD).]

For the purposes of this section, the term "affiliated interest" has the same meaning as in section 707, subsection 1, paragraph A. For the purposes of this section, "undue competitive advantage" means an advantage gained by a violation of the requirements established by the commission by rule pursuant to section 715. [1999, c. 158, §1 (AMD).]

#### SECTION HISTORY

1997, c. 237, §2 (NEW). 1999, c. 158, §1 (AMD).

### **§714. NOTICE TO COMMISSION**

Within 30 days of the commencement of operations by a utility of any business activity not regulated by the commission, the utility shall notify the commission of the existence of those operations. [1997, c. 237, §2 (NEW).]

#### SECTION HISTORY

1997, c. 237, §2 (NEW).

### **§715. RULEMAKING**

The commission shall adopt rules that prescribe the allocation of costs for facilities, services or intangibles that are shared between regulated and unregulated activities of a utility or an affiliated interest as defined in section 707, subsection 1, paragraph A. Rules adopted by the commission may not establish a presumption with regard to the value of good will used by an affiliated interest in those cases where the business venture of the affiliated interest is regulated by the commission. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. [1999, c. 158, §2 (AMD).]

#### SECTION HISTORY

1997, c. 237, §2 (NEW). 1999, c. 158, §2 (AMD).

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